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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-243

FILED
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PANHANDLE EASTERN PIPE LINE COMPANY,
AND
NATIONAL HELIUM CORPORATION,
Petitioners,
VS.
MOBIL OIL CORPORATION, et al.,
AND
RALPH GROUNDS, et al.,
Respondents.

BRIEF OF RESPONDENTS ASHLAND OIL & REFINING COMPANY, CABOT CORPORATION, DORCHESTER GAS PRODUCING COMPANY, HELMERICH & PAYNE, INC. AND TEXACO INC. (Lessee-Producers), IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The questions presented by this petition are substantially identical with those in No. 71-238. These respondents adopt their brief in opposition filed therein as their brief in opposition here.

We comment only briefly on two assertions made by petitioners, one of which is immaterial and the other inaccurate.

Petitioners' assertions that some of the FPC rate schedules contain contract prices lower than maximum FPC area rates is immaterial. Congress itself has specified that natural gas rates are inapplicable to commingled helium. It has made no distinction between rates which are higher, lower and the same as contract prices. In many instances there are *no* contract prices, as where 20-year term contracts have expired, or will expire. In such instances, unilaterally filed natural gas rates may be placed in effect and no contract price exists.

The settled law of rate regulation requires payment of the reasonable value of the unregulated commodity, helium, in addition to the regulated rates for natural gas. Indeed, parties cannot validly contract to deliver a valuable unregulated commodity in return for payment of only a regulated rate for a regulated commodity or service. *Louisville & N. R. Co.* v. *Central Iron & C. Co.*, 265 U.S. 59 (1924); *Atchison, Topeka and Santa Fe Railway Co.* v. *Bouziden*, 307 F.2d 230 (10 Cir. 1962).

It is also a fact that petitioners fail to show in their table (Petition p. 21) instances where contract prices are higher than FPC rates. They fail to show refunds paid under FPC orders pursuant to rate settlements reducing contract prices. They fail to note that most of the contracts they show are primarily smaller contracts covering deep gas zones below the base of the Hugoton gas zones containing the primary source of helium.

INTERPLEADER JURISDICTION

Petitioners are not accurate in stating that the subject of interpleader was limited to so-called "title" to helium. Both lower courts, with agreement by petitioners, found that the interpleader "fund" consisted of proceeds paid Helex companies for helium. (A. 6a, 67a, in No. 71-238).

Moreover, while the lower court held that gas contracts initially intended to convey title to helium as part of the delivered gas, it further held under elementary principles of contract law that failure of the Helex companies to make required payment for the unregulated helium resulted in failure of title. (A. 38a in No. 71-238).

Thus, the Court of Appeals correctly determined that it had jurisdiction of lessee-producer claims to a portion of the interpleader "fund" representing reasonable value of the helium in its commingled state. This specious Helex argument was never made in these cases until oral argument below, and was properly rejected. (A. 33a in No. 71-238).

CONCLUSION

The decision below is manifestly correct in its application of Section 11 of the Helium Act Amendments of 1960. The decision follows and applies the law of rate regulation as enunciated by this Court for many years.

The decision will affect only the litigants herein, and one or two other parties similarly situated.

Petitioners' technical arguments are insubstantial and incorrect.

The petition should be denied.

Respectfully submited,

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